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Attorney for Plaintiffs Ernest Lahti, Linda Lahti and Applied Reserve Analysis, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ERNEST LAHTI, LINDA)	Case No: CV-08-2341 BZ
LAHTI AND APPLIED)	
RESERVE ANALYSIS, LLC, a)	DECLARATION OF DON THOMAS IN
California corporation,)	SUPPORT OF TEMPORARY RESTRAINING
)	ORDER AND ORDER TO SHOW CAUSE FOR
Plaintiffs,)	PRELIMINARY INJUNCTION
)	
v.)	
)	
DAN BLOOMQUIST,)	
REBECCA BLOOMQUIST,)	
HIGHLANDS ELECTRONICS)	
LLC, an Arizona corporation, and)	
DOES 1 through 50 inclusive,)	
)	
Defendants.)	

I, Don Thomas, declare:

1. I am personally and professionally familiar with Applied Reserve Analysis, LLC

1 (“ARA”), the company of Ernest Lahti (“Ernie”) and Linda Lahti (“Linda”) (collectively, the
2 “Lahtis”), as I have worked with the Lahtis and their company for a period of at least 14 years.

3 2. My experience with Reserves Study companies covers a period of 22 years, and 5
4 different reserve study companies. These properties included personal ownership positions,
5 consultant advisory positions, and service as an elected officer of several homeowners
6 condominium townhouse/timeshare resort boards of directors.

7 3. I first started to use the services of ARA, LLC in 1994, at the Club Donatello Owners
8 Association, which is a nonprofit mutual benefit corporation, structured as a timeshare resort
9 condominium association. The Club Donatello reserves study profile was not in good shape
10 when I became involved, as there was only \$26,000 in Reserves. From the very beginning in
11 1994, the quality of the services provided by the ARA, LLC company enabled us to get the
12 property back up on its financial feet.

13 4. An essential factor influencing the effectiveness of a reserves study company is the
14 effective use of technology to digitally capture information for each property so that a
15 comprehensive inventory and aging profile can be established annually. This includes the use of
16 a software platform that can effectively utilize all of this information for purposes of quickly
17 generating quality reports and recommendations for the board of directors or management
18 company to utilize in their financial planning models.

19 5. Additional important primary factors influencing the effectiveness of a reserve study
20 company are as follows:

21 (a) The experience and knowledge of the persons performing the reserve study as

1 it relates to the reserves study legal requirements for each state, and the ability to recognize all of
2 the different types of common interest development properties to be evaluated, and the financial
3 projection formulas applicable for each property. This includes knowing all of the details for the
4 ongoing schedules for capital assets repairs, replacements and upgrades for improvement of
5 energy efficiency, and the overall cost of property operations.

6 (b) The knowledge and database resources of different building and property
7 codes, quality of different capital assets components, materials aging cycles, environmental
8 factors associated with internal/external wear and tear, quality of different management and
9 maintenance companies, and effective relationships with contractors and building-related
10 specialists is a key factor. That knowledge and information resource becomes an integral part of
11 what goes into the reserves study report and recommendations to the organizational entity.

12 (c) The working relationships of the Reserves Study team with the organizational
13 leadership for each property can result in an expedited, inexpensive and qualified outcome that
14 facilitates the financial management and planning process from year-to-year for the ultimate
15 benefit of the property owners/residents.

16 6. It is my personal and professional assessment, based on all of these experiences at
17 multiple properties and with different Reserves Study companies, that the ARA, LLC total
18 package of people, knowledge and skill, information resources, and software platform capability
19 is one of the best in the marketplace.

20 That is why we have been pleased to use their services at multiple common interest
21 development properties, and to refer them to many others, for which they have now provided

1 their services. We have consistently received positive feedback on the working relationships,
2 and the bottom-line quality of their work and Reserves Study advice/projections.

3 **A. Prejudice from Termination of Licensing Agreement**

4 7. If the Lahtis' software platform does not continue to support the timing, costs and
5 content deliverables which their Customers have come to expect from the past, they will suffer a
6 serious loss in customers. This is true even if they maintain and continue to develop all of their
7 people resources, their information database resources, and their personal relationships with their
8 Customers.

9 8. The reason the quality of the reserve analysis software company is essential is that
10 Customers will vote with their pocketbooks, if the quality starts to slip in anyway, they will find
11 a new reserve analysis company. Therefore, the capability of the underlying software platform
12 for the reserves study process is a very critical component. It can make or break a company's
13 ability to survive over time even when strong, long-term personal relationships have been
14 established over years.

15 9. Part of this issue is the fiduciary responsibility carried by each board of directors and
16 management company involved in the oversight of common interest development properties.
17 That is a factor influencing the content of their regulatory documents which require multiple
18 bidding processes for most contracts for services, assuming the pricing and quality of services is
19 relatively comparable, and then the decision is often based on relationships and performance.

20 **B. Terms of the Licensing Agreement**

21 10. I have served as the Lahtis' business consultant. On or about February 13, 2006,

1 when the Lahtis had been unsuccessful in negotiating a licensing agreement for the Reserve
2 Analyst Software (“Software”), I stepped in to assist them. I worked with the Lahtis to negotiate
3 the licensing agreement they ultimately entered into on March 8, 2008 (“Licensing Agreement”)
4 with Dan Bloomquist (“Dan”) and Rebecca Bloomquist (“Rebecca”) (collectively, the
5 “Bloomquists”).

6 11. The Lahtis and I bargained with the Bloomquists for a transferable five-year license
7 for exclusive use of the Software in Northern California. It was clear that the Lahtis desired the
8 transferable five-year exclusive license so that they could sell their business due to their
9 advanced age and poor health.

10 12. Eventually, the Lahtis and the Bloomquists agreed upon the following terms:

- 11 (a) The Lahtis would no longer be used to beta test the Software;
- 12 (b) The license would be for a five (5) year term and would automatically renew for
13 an additional five (5) years unless sixty (60) days prior notice was provided;
- 14 (c) The Lahtis would have exclusive use of the Software in Northern California;
- 15 (d) The exclusive license would be transferable to any purchaser of our business; and
- 16 (e) Any errors that the Lahtis encountered would be promptly remedied.
- 17 (f) The contract may be terminated for cause upon a material breach being uncured
18 for 30 days.

19 13. In order to receive the five (5) year term, the Lahtis agreed to pay a license fee of
20 \$10,000 annually to the Bloomquists well as a periodic increase in the license fee to account for
21 inflation, and they assigned their development rights to the Bloomquists.

1 14. Additionally, because the Lahtis were anticipating the sale of their business, I
2 negotiated a clause allowing for possible termination after two years in the event that the new
3 purchaser no longer wished to be bound by the Licensing Agreement. The Bloomquists insisted
4 that they also be able to terminate after two years in the event of a sale. As a result, I understood
5 that the Licensing Agreement would be a five-year agreement for a transferable exclusive license
6 to use the Software in Northern California, which allowed for possible discretionary termination
7 after two years of the five-year term if the business had been sold.

8 15. I cautioned the Lahtis to seek the advice of an attorney before signing the agreement,
9 but as I understood, the Lahtis were pressed for time by the Bloomquists who demanded an
10 immediate response.

11 16. Unknown to the Lahtis or I, the Bloomquists included a clause, without any mention
12 of a possible sale that allowed for termination upon sixty (60) days prior written notice after the
13 second year of the Licensing Agreement.

14 17. I declare under penalty of perjury under the laws of the State of California and the
15 laws of the United States of America that the foregoing is true and correct and was executed in
16 Sunnyvale, California on May 16, 2008.

17
18
19 By: /s/ Don R. Thomas

DON R. THOMAS

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ERNEST LAHTI, LINDA)
LAHTI AND APPLIED)
RESERVE ANALYSIS, LLC, a)
California corporation,)

Plaintiffs,)

v.)

DAN BLOOMQUIST,)
REBECCA BLOOMQUIST,)
HIGHLANDS ELECTRONICS)
LLC, an Arizona corporation, and)
DOES 1 through 50 inclusive,)

Defendants.)

Case No: C08-2314 BZ

CERTIFICATE OF SERVICE

1 I declare:

2 I am employed in the County of San Francisco, State of California. My business address is 25
3 Jessie Street, 16th Floor, San Francisco, CA 94105. I am over the age of eighteen years, and I am
4 not a party to the within action. On May 16, 2008 I served the following documents:

- 5 • ***DECLARATION OF DON THOMAS IN SUPPORT OF TEMPORARY***
- 6 ***RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR***
- 7 ***PRELIMINARY INJUNCTION; AND***
- 8 • ***CERTIFICATE OF SERVICE.***

9 Upon the party listed below, addressed as follows:

10 **Rebecca Bloomquist**
11 **P.O. Box 797**
12 **Vernon, Arizona 85940**
13 **Rebecca@lakeweb.com**

Dan Bloomquist
P.O. Box 797
Vernon, Arizona 85940
Dan_b@lakeweb.com

14 **Highlands Electronics**
15 **P.O. Box 797**
16 **Vernon, Arizona 85940**
17 **Rebecca@lakeweb.com**

18 **XXX First Class Mail:** By depositing a sealed envelope in the United States mail at San
19 Francisco, California, with postage fully prepaid.

20 **Facsimile:** By transmitted a true and correct copy via facsimile electronic equipment
21 transmission (fax) to the office(s) of the addressee(s) at the fax number(s) listed above.

22 **Personal Delivery:** By personally delivering the document(s) listed above to the
23 person(s) at the address(es) on the date set forth above.

24 **XXX Electronic Mail:** On May 16, 2008 at 4:45 pm I transmitted a true and correct copy via
25 electronic mail to the office(s) of the addressee(s) at the electronic mail address(es) listed
26 above.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct. Executed on May 16, 2008 at San Francisco, California.

By: /s/ Rithy Keo
Rithy Keo
Legal Assistant